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TAX POLICIES FOR KENTUCKY'S POTENTIAL MARIJUANA INDUSTRY

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A haze is looming on Kentucky. Public opinion has shifted to favor the legalization of marijuana.^[i] This shift was expressed in a major way with the legalization of the recreational use of marijuana in both Colorado^[ii] and Washington.^[iii] This provided Colorado an additional \$53 million in tax revenue for 2014,^[iv] with "tax revenues...expected to climb to \$94 million annually by 2016."^[v] In Washington, marijuana is projected to "bring in more than \$694 million in state revenue through the middle of 2019."^[vi]

With a clear economic advantage arising from the legalization of marijuana, Kentucky politicians are beginning to examine Kentucky's marijuana laws. In the Kentucky Legislature's 2015 session, House Speaker Greg Stumbo sponsored a bill that would have legalized medical marijuana.^[vii] Although marijuana is still considered a Schedule I controlled substance,^[viii] the Kentucky House of Representatives proposed legislation that would lessen the penalty for possession of marijuana from a Class B misdemeanor to a \$100 fine.^[ix] If Kentucky decides to legalize medical and/or recreational marijuana, then Kentucky can model its tax policy on this new industry from Colorado and Washington.

In Colorado, the total marijuana tax revenue includes: a 2.9% state sales tax; a 10% state tax on retail marijuana sales; a 15% excise tax based on the average wholesale market rate; and application and licensing fees.^[x] Due to a 2015 Colorado House Bill, the retail marijuana sales tax will reduce to 8% in 2017.^[xi] Additionally, varied local sales taxes and local marijuana taxes also apply.^[xii] In spite of this duplicitous tax system, "Colorado's marijuana tax collections" were not "as high as expected."^[xiii]

In Washington, the total marijuana tax revenue is derived from: "a 25% tax on producer sales to processors; a 25% tax on processor sales to retailers; a 25% tax on retailer sales to customers; a state Business & Occupation...gross receipts tax; a state sales tax of 6.5% ; and varied local sales taxes."^[xiv] The main tax burden consists of the three separate 25% taxes "at the production, wholesale, and retail levels."^[xv] In total, "the trio of taxes translates into an effective rate of 44%."^[xvi] Although analysts predicted that this high tax rate would deter consumers from Washington's burgeoning marijuana industry,^[xvii] it was quickly determined that "Washington's legal recreational marijuana market [was] bringing in more tax revenue to the state than originally predicted."^[xviii]

Kentucky could receive significant tax revenues by legalizing marijuana.^[ix] To achieve this, it would be prudent to follow Colorado and Washington's tax structures. I would recommend following Washington's example of having three separate taxes on the production, wholesale, and retail level.^[xx] I would then suggest following Colorado's example by implementing a lower rate for each of these separate taxes.^[xxi] I would additionally recommend a rate that is higher than Colorado's, but lower than Washington's. With this type of tax system, Kentucky's marijuana industry could produce a very real "green rush."

[i] See Seth Motel, *6 Facts about Marijuana*, Pew Research Center (Apr. 14, 2015), <http://www.pewresearch.org/fact-tank/2015/04/14/6-facts-about-marijuana/>; Christopher Ingraham, *A Majority Favors Marijuana Legalization for First Time, According to Nation's Most Authoritative Survey*, The Washington Post (Mar. 4, 2015), <http://www.washingtonpost.com/blogs/wonkblog/wp/2015/03/04/majority-of-americans-favor-marijuana-legalization-for-first-time-according-to-the-nations-most-authoritative-survey/>.

[ii] Matt Fernet, *Amendment 64 Passes: Colorado Legalizes Marijuana for Recreational Use*, Huffington Post (Nov. 20, 2012), http://www.huffingtonpost.com/2012/11/06/amendment-64-passes-in-co_n_2079899.html.

[iii] Jonathan Martin, *Voters Agree to Legalize Pot*, The Seattle Times (Nov. 6, 2012), <http://blogs.seattletimes.com/politicsnorthwest/2012/11/06/marijuana-legalization-takes-commanding-lead/>.

[iv] Katie Lobosco, *Recreational Pot: \$53 Million in Tax Revenue to Colorado*, CNN Money (Feb. 12, 2015), <http://money.cnn.com/2015/02/12/news/economy/colorado-marijuana-tax-revenue/>.

[v] Christopher Ingraham, *Colorado's Legal Weed Market: \$700 Million in Sales Last Year; \$1 Billion by 2016*, The Washington Post (Feb. 12, 2015), <http://www.washingtonpost.com/blogs/wonkblog/wp/2015/02/12/colorados-legal-weed-market-700-million-in-sales-last-year-1-billion-by-2016/>.

[vi] Rachel La Corte, *Legal Pot in Washington Bringing in Even More Tax Than Predicted*, Huffington Post (Nov. 20, 2014), http://www.huffingtonpost.com/2014/11/20/legal-pot-washington-market-tax-revenue_n_6191848.html.

[vii] *Kentucky House Speaker Emerges As Medical Marijuana Champion for 2015*, Marijuana Policy Project, <http://www.mpp.org/states/kentucky/> (last updated Apr. 23, 2015).

[viii] Ky. Rev. Stat. Ann. §218A.050 (West 2015).

[ix] H.B. 305, 2015 Reg. Sess., (Ky. 2015).

[x] Joseph Henchman, *Taxing Marijuana: The Washington and Colorado Experience*, The Tax Foundation (Aug. 25, 2014), <http://taxfoundation.org/article/taxing-marijuana-washington-and-colorado-experience>; *Colorado Marijuana Tax Data*, Colorado Department of Revenue, <https://www.colorado.gov/pacific/revenue/colorado-marijuana-tax-data> (last visited June 10, 2015); H.B. 15-1367, §3 & 5, 2015 Leg. (Colo. 2015).

[xi] H.B. 15-1367, §3, 2015 Leg. (Colo. 2015).

[xii] Joseph Henchman, *Taxing Marijuana: The Washington and Colorado Experience*, The Tax Foundation (Aug. 25, 2014), <http://taxfoundation.org/article/taxing-marijuana-washington-and-colorado-experience>.

[xiii] Josh Barro, *Marijuana Taxes Won't Save State Budgets*, The New York Times (Apr. 9, 2015), <http://www.nytimes.com/2015/04/09/upshot/09up-marijuana.html?abs=0002&abg=0>.

[xiv] Henchman, *supra* note 12.

[xv] Niraj Chokshi, *Moody's: Washington Might Not See the Marijuana Tax Windfall Previously Projected*, The Washington Post (July 22, 2014), <http://www.washingtonpost.com/blogs/govbeat/wp/2014/07/22/moodys-washington-might-not-see-the-marijuana-tax-windfall-previously-projected/>.

[xvi] *Id.*

[xvii] Andrea Unsworth and Robert A. Kurtter, *Moody's: Slow Marijuana Sales Will Have Little Impact on Washington State Credit Quality*, Moody's (July 21, 2014), https://www.moodys.com/research/Moodys-Slow-marijuana-sales-will-have-little-impact-on-Washington-PR_304624?WT.mc_id=NLITTLE_YYYYMMDD_PR_304624.

[xviii] La Corte, *supra* note 6.

[xix] Erik Cederwall, *New NerdWallet Report Project Significant Revenues from Marijuana Legalization*, The Tax Foundation (Oct. 1, 2014), <http://taxfoundation.org/blog/new-nerdwallet-report-projects-significant-revenues-marijuana-legalization>.

[xx] Chokshi, *supra* note 15.

[xxi] H.B. 305, 2015 Reg. Sess., (Ky. 2015).

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